IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

YANG C. LOR, et al.,	:	
	:	CIVIL ACTION
v.	:	No. 99-4809
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE, et al.	:	

O'Neill, J. January , 2000

M E M O R A N D U M

This case is a civil rights action brought by the estate of Nhia Bee Moua, an involuntarily committed patient at Wernersville State Hospital who died as a result of an assault by another patient in September 1997. Defendants are the Commonwealth of Pennsylvania Department of Public Welfare, high ranking officials of the Commonwealth, and employees of Wernersville. Defendants have moved to dismiss the complaint on a variety of grounds. The motion will be GRANTED IN PART.

BACKGROUND

For the purposes of deciding defendants' motion, the Court assumes that the well plead factual allegations in the complaint are true.

In October 1996, Mr. Moua began exhibiting irrational and violent behavior towards his wife and children. See Complaint ¶ 18. As a result, he was jailed for approximately one week and later transferred to Norristown State Hospital for a ninety-day psychiatric evaluation. Id. ¶¶

19-21. Thereafter, he was involuntarily committed to Wernersville in April 1997. Id. ¶ 22.

On September 26, 1997, Mr. Moua was physically assaulted by another patient. Id. ¶ 23. His injuries included severe facial lacerations and trauma to the windpipe. Id. Shortly after the assault, he lapsed into a "semi-coma" and experienced paralysis of the right upper extremity. Id. Over the course of the next few days, Mr. Moua was "transferred back and forth" between Wernersville and the Reading Hospital and Medical Center ("RHMC"). Id. ¶ 24. He died as a result of his injuries on October 4, 1997. Id. ¶ 25. Hospital personnel later told Mr. Moua's family that the assailant was unknown. Id. ¶ 27.

Some time after Mr. Moua's death, his family received an anonymous note stating: "I am one of the nursing staff at WSH. I know what happened to Mr. Nhia Moua." Id. ¶ 34, Exhibit B. Enclosed with the note were two documents. The first document was a memorandum from defendant Dr. Irwin Forman to defendant Kenneth Ehrhart (then-acting Superintendent of Wernersville). It states that there were "at least twelve highly assaultive" patients in the part of the hospital where Mr. Moua resided and there was "an atmosphere in which the more defenseless patients [could] be injured." Id. It then cites the assault on Mr. Moua as an example and specifically names the patient who committed the assault. Id.

The second document was a letter from defendant Dr. Phyllis Murr to the Director of Medicine at RHMC. It states:

> [Mr. Moua] was sent to RHMC after an event that occurred at Wernersville State Hospital . . . He was returned a few days later to our hospital unable to eat or drink. We were forced to send him back to you because we were unable to handle him at that time. Some problems occurred because he was transferred on a Sunday when I was not available and the usual nursing supervisors were not available to discuss the issues involved.
>
> I wish to make you aware that Wernersville State Hospital has been "right-

> sizing" over the past few years. What this means is that the patient population has diminished and a number of wards have closed. This has included the closure of our Long Term Care Facility. We have two beds – one male, one female – which we reserve and designate as "convalescent" beds for limited rehabilitation. These are used for such circumstances as post-op fractured hips. Patients stay in these beds for a limited amount of time and are then returned to their regular wards. We do have nursing procedures in writing for such things as IV's and NG tube training, however, because they are reinstituted. This, or course, takes a few days.
>
> This was one of the problems with the weekend transfer of Nhia Moua. Under all circumstances, when a patient's medical problems predominate over psychiatric, we seek placement outside our facility to a Long Term Care setting. It is unfortunate that Mr. Moua had to be discharged when we were not prepared to handle him.

Id. (emphasis in original).

Plaintiffs Yang Lor and Thong Moua in their capacity as administrators of Mr. Moua's estate filed the complaint in this matter on September 27, 1999. The complaint names twenty-one defendants, including three Commonwealth defendants,[1] seven Wernersville defendants,[2] the coroner/medical examiner of RHMC,[3] and ten John Doe defendants. The complaint alleges violations of Mr. Moua's civil rights under the Eighth and Fourteenth Amendments of the Constitution, as well as violations of 42 U.S.C. §§ 1983, 1985 and 1997 (Count I), medical

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[1] The Commonwealth defendants are the Department of Public Welfare, Thomas Ridge (the Governor of Pennsylvania), and Feather Houstoun (the Secretary of the Department of Public Welfare). Defendants Ridge and Houstoun were sued both individually and in their official capacities.

[2] The Wernersville defendants are Kenneth W. Ehrhart (then-Acting Superintendent), Merlyn R. Demmy, M.D. (Chief of Clinical Services), Irwin Forman, M.D. (Treatment Team Director), Phyllis A. Murr, M.D. (Chief of Medicine), Seok Y. Lee, M.D. (Chief of Psychiatry), Sylvia A. Godboldt (Assistant Superintendent of Nursing Services), and Walt A. Stump (Assistant Superintendent of Rehabilitation Services). All of the Wernersville defendants were sued both individually and in their official capacities.

[3] David L. George, M.D., the coroner/medical examiner of RHMC, was dismissed from the case by separate Order dated January 3, 2000.

malpractice (Count II), and simple negligence (Count III). Because the Court has subject matter jurisdiction over the federal civil rights claims, it can also consider the supplemental state claims pursuant to 28 U.S.C. § 1367.

DISCUSSION

A. Civil Rights Violations (Count I)

Count I of the complaint alleges violations of the Eighth and Fourteenth Amendments of the Constitution, as well as violations of 42 U.S.C. §§ 1983 and 1985 and 42 U.S.C. § 1997 et seq. (the Civil Rights of Institutionalized Persons Act or "CRIPA"). The Court finds plaintiffs have stated a viable Section 1983 claim for violations of Mr. Moua's due process rights, but the Eighth Amendment and CRIPA claims must be dismissed. Similarly, defendants Ridge and Houstoun must be dismissed because plaintiffs have failed to allege a sufficient causal link between their actions and Mr. Moua's death. Finally, the Eleventh Amendment bars claims against the Commonwealth of Pennsylvania and all agents of the Commonwealth acting in their official capacities.

1. Due Process, the Eighth Amendment, and CRIPA

In Youngberg v. Romeo, 457 U.S. 307 (1982), the Supreme Court held that an individual involuntarily committed to a state institution has a substantive right to safe conditions of confinement under the Due Process Clause of the Fourteenth Amendment. Claim for violations of this right are cognizable as Section 1983 suits. Id. at 309.

As the facts of Youngberg make clear, the right to safe conditions of confinement includes protection from attacks by other patients. Id. at 310. Youngberg established a "professional judgment" standard for evaluating such claims. Id. at 321 ("[T]he Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made."), quoting Romeo v. Youngberg, 644 F.2d 147, 178 (3d Cir. 1980).

Defendants argue that plaintiffs have failed to state a claim under Youngberg because they have not alleged any failure to exercise professional judgment. See Defendants' Mem. at 10. The Court rejects this argument. While it is literally true that plaintiffs have not used the term of art "professional judgment," the complaint alleges that defendants "intentionally or grossly negligently" allowed a "highly assaultive . . . atmosphere" to prevail within the hospital. See Complaint ¶¶ 29-30, Exhibit B. Holding that an allegation of gross negligence does not subsume a failure to exercise professional judgment would elevate form over substance.

However, plaintiffs' Eighth Amendment and CRIPA claims must be dismissed. Since it is not alleged that Mr. Moua was ever charged with or convicted of any crime, the conditions of his involuntary commitment must be viewed in light of the Due Process Clause rather than the Eighth Amendment. See Ingraham v. Wright, 430 U.S. 651, 671 n.40 (1977) ("[T]he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law. Where the State seeks to impose punishment without such an adjudication, the pertinent constitutional guarantee is the Due Process Clause of the Fourteenth Amendment."). Similarly, CRIPA creates no new substantive rights but rather merely gives the Attorney General standing to sue on behalf of

institutionalized individuals to ensure that their constitutional rights are protected. See 42 U.S.C. § 1997a; United States v. Pennsylvania, 863 F. Supp. 217, 219 (E.D. Pa. 1994). CRIPA therefore does not afford plaintiffs an independent cause of action in this case and that claim must be dismissed.

2. Causation

Defendants next argue that plaintiffs have failed to allege a sufficient causal link between their actions and Mr. Moua's injuries and death.

It is well established that a defendant in a Section 1983 suit must have some "personal involvement" in the alleged wrong. See Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). Personal involvement can mean either personally directing the unconstitutional acts or having knowledge of and acquiescing in the unconstitutional acts. Id. Liability can therefore be imposed upon those individuals who had the "power and responsibility to protect [Mr. Moua's] safety." See Shaw v. Stackhouse, 920 F.2d 1135, 1147 (3d Cir. 1990).

Defendants argue that this standard has not been met because the "complaint indicates only that each of the individual defendants was a high-ranking state official." Defendants' Mem. at 9. This assertion is correct when applied to defendants Ridge and Houstoun, and the claims against them will be dismissed. The same cannot be said of the Wernersville defendants. These defendants were not "high ranking state official[s]," but rather were hospital personnel who had the "power and responsibility to protect [Mr. Moua's] safety." See Shaw, 920 F.2d at 1147.

The memorandum from defendant Forman to defendant Ehrhart illustrates this point. In that memorandum, Dr. Forman requested the assistance of Mr. Ehrhart (then-Acting

Superintendent of Wernersville) in dealing with the "highly assaultive" patients who posed a threat to "more defenseless" patients like Mr. Moua. The only reasonable inference that can be drawn from this document is that Mr. Ehrhart – the highest ranking Wernersville official and least likely to be involved in the day to day care of patients – was (or should have been) aware of the problems that allegedly lead to Mr. Moua's death and could have acted to prevent that tragedy. For the purposes of a motion to dismiss, plaintiffs are entitled to the inference that the other lower-ranking Wernersville defendants were in a similar position. Of course, after discovery it may well turn out that some of the other Wernersville defendants were not in such a position because of their job descriptions and the organizational structure of the hospital. If so, they can move for summary judgment at the appropriate time.

3. Eleventh Amendment

The Eleventh Amendment bars a citizen from bringing a suit against his or her own state in federal court. See Atascadero State Hospital v. Scanlon, 473 U.S. 234, 238 (1985). This is true even though the express terms of the Amendment do not so provide. Id. See also John Randolph Prince, Forgetting the Lyrics and Changing the Tune: The Eleventh Amendment and Textual Infidelity, 104 Dick. L. Rev. 1, 5 (1999). A state may waive its immunity and consent to suit in federal court, Atascadero, 473 U.S. at 238, but by statute Pennsylvania has specifically withheld such consent. See 42 Pa.C.S.A. § 8521(b); Laskaris v. Thornburgh, 661 F.2d 23, 26 (3d Cir. 1981). However, the Eleventh Amendment does not bar personal-capacity suits, i.e., suits seeking to hold government agents personally liable for actions taken under the color of state law. See Hafer v. Melo, 502 U.S. 21, 25 (1991).

In this case, plaintiffs have named the Commonwealth's Department of Public Welfare directly and have named each of the individual defendants in their official capacities. The Court must dismiss these claims because of the Eleventh Amendment. However, plaintiffs may maintain their claims against the individual defendants in their personal capacities (except for defendants Ridge and Houstoun who must be dismissed for the other reasons stated above).

B. Count II – Medical Malpractice

Count II of the complaint seeks to hold the Wernersville defendants (except for defendant Ehrhart) and the John Doe defendants liable for medical malpractice under Pennsylvania law. Defendants argue that this claim is barred by sovereign immunity.

42 Pa.C.S.A. § 8522(b)(2) waives sovereign immunity for "[a]cts of health care employees of Commonwealth agency medical facilities or institutions or by a Commonwealth party who is a doctor, dentist, nurse or related health care personnel." In Moser v. Heistand, 681 A.2d 1322 (Pa. 1996), the Pennsylvania Supreme Court held that this exception to sovereign immunity does not permit suits based on "corporate negligence." A plaintiff cannot bring a "cause of action [that] arises from the policies, actions or inaction of the institution itself rather than the specific acts of individual hospital employees." Id. at 1326.

Defendants are therefore correct in arguing that plaintiffs cannot hold the Wernersville defendants liable for the "custom, policy and practice" of failing to "separate and/or adequately supervise" violent patients. Complaint ¶ 41. However, the complaint alleges other facts that could be construed as malpractice based upon specific acts of individual hospital employees. Plaintiffs claim that after his assault Mr. Moua was "transferred back and forth" between

Wernersville and RHMC, despite being in a "semi-coma." See Complaint ¶ 24. Moreover, the letter from defendant Murr to the Director of Medicine at RHMC candidly admits that Wernersville was "not prepared to handle" Mr. Moua when he was transferred back and makes reference to "problems [that] occurred because . . . the usual nursing supervisors were not available." Id., Exhibit B. Given that Mr. Moua's death occurred sometime shortly thereafter, plaintiffs will be allowed to proceed on the theory that these "problems" constituted individual medical malpractice within the purview of 42 Pa.C.S.A. § 8522(b)(2).

C. Count III – Negligence

Count III of the complaint seeks to hold defendants Ridge, Houstoun, Ehrhart and John Does 1-10 liable for negligence under Pennsylvania law. Plaintiffs have identified no statutory waiver of sovereign immunity that would allow them to maintain this claim against defendants Ridge, Houstoun and Ehrhart; therefore, this claim will be dismissed. However, if the John Doe defendants are eventually identified and either are not state agents or are state agents within a statutory waiver of sovereign immunity, then plaintiffs may proceed against those parties on the negligence claim.

An appropriate Order follows.

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O R D E R

AND NOW, this day of February, 2000, in consideration of defendants' motion to dismiss, and plaintiffs' response thereto, and for the reasons set forth in the accompanying memorandum, it is hereby ORDERED that:

1. Plaintiffs' claims against defendants Commonwealth Department of Public Welfare, Thomas Ridge, and Feather Houstoun are dismissed;
2. Plaintiffs' claims against the remaining defendants in their official capacities are dismissed;
3. Plaintiffs' claims for violations of the Eighth Amendment and the Civil Rights of Institutionalized Persons Act are dismissed; and,
4. Plaintiffs' claim for negligence against defendant Kenneth W. Ehrhart is dismissed.

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THOMAS N. O'NEILL, JR., J.